

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.H.
Mtg. Date April 17, 2018
Dept. Development Services Department

Item Title: Adopt Resolution Upholding Development Services Director's Determination to Deny Zoning Clearance No. ZCM-170-0002; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 3515-21 Harris Street in the General Commercial/Heavy Commercial Zone

Staff Contact: David De Vries, Development Services Director

Recommendation:

1. Adopt a Resolution (**Attachment B**) upholding the Development Services Director's determination to deny ZCM-170-0002, a request to apply for a conditional use permit to establish a medical marijuana dispensary at 3515-21 Harris Street in the General Commercial/Heavy Commercial Zone.

Item Summary:

On April 3, 2018, the City Council adopted a Resolution upholding the Development Services Director determination to deny Zoning Clearance Application No. ZCM-170-0002, a request to establish a medical marijuana dispensary (MMD) on a 0.2 acre commercial property located at 3515-3521 Harris Street with an amendment that provisions associated with "An application shall not apply for the same or similar use affecting all or part of the property within twelve months of the effective date of the decision of denial" be waived in accordance with Section 17.28.020(I) of the Lemon Grove Municipal Code. The application was denied because the proposed MMD would be at a property located within 1,000 feet of one State-licensed family daycare facility. The attached resolution for consideration provides staff's interpretation of the City Council's action for recommended adoption (**Attachment A**). The new text is underlined. The public hearing and comment period is closed for this item.

Fiscal Impact:

None.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorically Exempt | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Tribal Government Consultation Request |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Notice to property owners within 500 ft. | |

Attachments:

A. Resolution of Denial

RESOLUTION NO.2017-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE UPHOLDING THE DEVELOPMENT SERVICES DIRECTOR'S DETERMINATION TO DENY A REQUEST TO APPLY FOR A CONDITIONAL USE PERMIT TO ESTABLISH A MEDICAL MARIJUANA DISPENSARY AT 3515-21 HARRIS STREET (ZCM-170-0002), LEMON GROVE, CALIFORNIA

WHEREAS, on November 8, 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries and establishing performance standards and a permit process by which medical marijuana dispensaries may be established; and

WHEREAS, Measure V includes the adoption of Lemon Grove Municipal Code Chapter 17.32 which prohibits the establishment of medical marijuana dispensaries within 1,000 feet of certain protected uses, including schools and licensed daycare facilities; and

WHEREAS, Measure V states "measurement is made between the closest property lines of the premises in which the regulated uses and protected uses are located." Measure V further states "the measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access." Measure V only references freeways and flood control channels as examples of constructed barriers. A freeway is defined as "an express highway, especially one with controlled access." Flood control is defined as "the act or technique of controlling river flow with dams, dikes, artificial channels, etc., so as to minimize the occurrence of floods." Examples of constructed barriers only include major linear obstructions traversing for miles where pedestrian access is prohibited or severely limited; and

WHEREAS, City staff requested and obtained a confidential list of licensed family daycare homes from the California Department of Social Services; and

WHEREAS, in order to obtain the confidential list of family daycare homes, City of Lemon Grove staff agreed to keep the information confidential; and

WHEREAS, Government Code Section 6254.5(e) specifically exempts government agencies from the requirement to disclose confidential information that was shared between agencies under an agreement to maintain the confidentiality of said information; and

WHEREAS, on March 13, 2017, the City received a confidential list from the California Department of Social Services noting at least two such facilities are within 1,000 feet of 3515-21 Harris Street (Subject Property); and

WHEREAS, on March 21, 2017, Zoning Clearance application ZC1-700-0003, a request to apply for a CUP to operate a medical marijuana dispensary (MMD) at the Subject Property, was denied because the property was located within 1,000 feet of a State-licensed family daycare facility and applicant did not appeal the application; and

WHEREAS, the State provided evidence to the City that two licensed family daycares within 1,000 feet of the Subject Property had both surrendered their license. These were the same facilities which previously restricted a MMD at the Subject Property. This new evidence allowed the prospective MMD to reapply for a zoning clearance for a MMD on December 6, 2017 and subsequently the City provided the appellant a Notice of Incomplete on January 4, 2018 because several materials required for a CUP submittal were not submitted; and

Attachment A

WHEREAS, on February 13, 2018, DSS informed the City that a new small family daycare was licensed as of February 12, 2018 at one of the previously licensed daycares that had surrendered their license and was within 1,000 feet of the Subject Property; and

WHEREAS, on February 15, 2018, because the Subject Property was now within 1,000 feet of a protected use (a small family daycare), the Development Services Director denied the Zoning Clearance application in process (ZCM-170-0002) determining the Subject Property was ineligible for a MMD; and

WHEREAS, on February 20, 2018, the appellant, Jilette Yousif of KIM Investments, LLC, filed AA1-800-0001, an administrative appeal of the Director's decision; and

WHEREAS, on March 8, 2018, out of an abundance of caution and in order to provide a full and open opportunity for the appellant to understand the reason staff denied the zoning clearance permit, and to allow the appellant to respond accordingly, staff disclosed the address of the protected use affecting the Subject Property along with the date of the appeal hearing as evidenced by the letter attached to the Agenda Item Summary as Attachment "K". This licensed family daycare facility is located 649 feet southwest of the Subject Property using straight line measurement; and

WHEREAS, on March 8, 2018, staff contacted the family daycare operator via an email and written letter and informed them that their location would be disclosed to the appellant; and

WHEREAS, the appellant has failed to show that their facility is greater than 1,000 feet from the California-licensed daycare facility; and

WHEREAS, Vehicle Code Section 21954 (Pedestrians Outside Crosswalks) includes requirements that "every pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway so near as to constitute an immediate hazard" meaning pedestrians are authorized to cross at Harris Street and Citrus Street and vehicles must yield to pedestrians at these uncontrolled intersections (unmarked crosswalks and no traffic signals); and

WHEREAS, on April 3, 2018, the City Council held a duly noticed public hearing to consider Administrative Appeal AA1-800-0001, an appeal of the Development Services Director's determination to deny ZCM-170-0002; and

WHEREAS, the appeal of this determination is not a project and is not subject to the environmental review requirements of the California Environmental Quality Act (CEQA); and

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby:

1. Denies Jilette Yousif of KIM Investments, LLC Administrative Appeal No. AA1-800-0001 based on the above-findings; and
2. Upholds the Development Services Director's February 15, 2018 determination to deny Zoning Clearance No. ZCM-170-0002, a request to apply for a conditional use permit to operate a medical marijuana dispensary, at 3515-21 Harris Street, Lemon Grove, CA.
3. Waives provisions associated with "An application shall not apply for the same or similar use affecting all or part of the property within twelve months of the effective date of the decision of denial" in accordance with Section 17.28.020(I) of the Lemon Grove Municipal Code.